

No. 2021

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

THE FIDELITY LUMBER COMPANY, a Corporation,
Plaintiff in Error,

vs.

GREAT NORTHERN RAILWAY COMPANY, a Corporation,
Defendant in Error.

TRANSCRIPT OF RECORD.

Upon Writ of Error to the United States Circuit Court
for the Western District of Washington,
Northern Division.

FILED

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*In the Circuit Court of the United States for the Western
District of Washington, Northern Division.*

GREAT NORTHERN RAILWAY COMPANY, a corporation, <i>Plaintiff and Defendant in Error,</i>	}	No. 1948.
vs.		
THE FIDELITY LUMBER COM- PANY, a corporation, <i>Defendant and Plaintiff in Error.</i>		

NAMES AND ADDRESSES OF COUNSEL.

F. V. BROWN, Esq.,
King Street Station, Seattle, Washington.

F. G. DORETY, Esq.,
King Street Station, Seattle, Washington.

JAMES B. KERR, Esq., of Counsel,
Portland, Oregon.

Attorneys for Plaintiff and Defendant in Error.

H. M. STEPHENS, Esq.,
Peyton Block, Spokane, Washington.
Attorney for Defendant and Plaintiff in Error.

*In the Circuit Court of the United States for the Western
District of Washington.*

GREAT NORTHERN RAILWAY COMPANY, a corporation,	}	No. 1948. COMPLAINT.
<i>Plaintiff,</i>		
vs.		
FIDELITY LUMBER COMPANY, a corporation,	}	
<i>Defendant.</i>		

Comes now the plaintiff above named, and for its cause of action against the defendant above named, respectfully shows to the Court as follows:

I.

That the Great Northern Railway Company is and at all times hereinafter mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota.

II.

That the defendant, the Fidelity Lumber Company, is now and at all times hereinafter mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of Washington.

III.

That the Great Northern Railway Company is now and at all the times hereinafter mentioned was a common carrier of freight and passengers from points within to points without the State of Washington, and from points within to points without the State of Idaho, and as such carrier is and at all times was subject to and amenable to the provisions of that certain act of Congress entitled "An Act to Regulate Commerce," approved February 4th, 1887, and the acts of Congress amendatory thereof and supplemental thereto.

IV.

That heretofore and prior to October 31st, 1907, plaintiff, together with other carriers amenable to said Act to Regulate Commerce, and in pursuance of the provisions of said Act, filed and published certain tariffs prescribing rates for the transportation of lumber, shingles and other forest products from points within to points without the States of Washington and Idaho, which were substantially higher than the rates theretofore in force between said points, and in force up to and including October 31st, 1907. That heretofore, to-wit, on or about October 31, 1907, the Honorable C. H. Hanford, one of the judges of the above court, signed and entered an order by the terms whereof this plaintiff was enjoined from collecting or receiving from the Pacific Coast Lumber Manufacturers' Association, or from the Shingle Mills Bureau, or from any persons, firms or corporations who were members of the said Pacific Coast Lumber Manufacturers' Association or of the Shingle Mills Bureau, or from the consignees of said Association or Bureau or the members thereof, amounts for the shipment of lumber, shingles or other forest products described in its certain tariffs to which this plaintiff was a party, and filed with the Interstate Commerce Commission, and known as I. C. C. Tariff Number 850, and Great Northern I. C. C. No. A2667, and Northern Pacific I. C. C. Tariff No. A 3432, in excess of the rates shown in the schedules of said tariffs on file with the Interstate Commerce Commission and in force up to and including October 31, 1907. That said order so signed and entered by the Honorable C. H. Hanford, was signed and entered upon a certain bill of complaint filed in said Court wherein the said Pacific Coast Lumber Manufacturers' Association, and others, were complainants, and the Great Northern Railway Company, and others, were defendants, which said bill and the cause in which the same was filed, was known and designated in said Court as case No. 1565.

V.

That thereafter the Potlatch Lumber Company, the Fidelity Lumber Company, and others, made application to the Court above named for leave to file a petition in intervention, by the terms whereof they prayed that the Great Northern Railway Company might be restrained from collecting from the said Potlatch Lumber Company, the Fidelity Lumber Company and the others joining with it in said petition, any rates for the transportation from points within to points without the States of Washington and Idaho, of lumber and forest products, and the commodities described in said tariffs, higher than the said Great Northern Railway Company was permitted by the restraining order above described to collect from the Pacific Coast Lumber Manufacturers' Association and Shingle Mills Bureau, and the members thereof.

That thereupon, and on the 18th day of November, 1907, a further order was signed and entered by the said C. H. Hanford, Judge of said Court, which order is in words and figures as follows, to-wit:

(Title of cause omitted.)

Now on the 18th day of November, 1907, it appearing to the Court that the above named intervenors having exhibited their bill of intervention, and leave to file same having been given, and thereupon intervenors having filed said bill, and it appearing therefrom that the intervenors are entitled to relief as shown by said bill and that intervenors are entitled to relief by injunction the same as the original complainants therein;

It is, therefore, hereby ordered that until further order of the Court, the carriers who are parties defendant to this suit shall not collect from the intervenors or either of them or from the consignees or any consignee of the intervenors or either of them amounts on the shipment of commodities or any commodity shown in the tariffs described in the amended bill and intervention bill herein and especially Interstate Com-

merce Commission Tariff No. 850 and supplements thereto in excess of the rate shown in the schedule of tariffs existing prior to November 1, 1907 (and prior to said Tariff No. 850), covering the transportation of said commodities or any thereof, provided that, and as condition of this order, the intervenors shall execute to defendants and file herein their joint and several bond, with good and sufficient surety, in the sum of seventy-five thousand dollars, to be approved by the Court, conditioned that the intervenors will save, indemnify and keep harmless the defendants and each of them from all loss, cost and damage by reason of the issuance of said injunction, and further conditioned that if said rates shall be finally held to be reasonable or rates in excess of the superceded tariff shall be established by the Interstate Commerce Commission or this Court, each of the intervenors who may be served by either of the defendants as a carrier of lumber, shingles or timber products, shall pay to such carriers the difference, if any, between the amount paid for such service at the rate provided herein, and whatever rate shall be finally established as the rate lawfully chargeable on and after November 1, 1907. This order shall take effect immediately, and the bond required shall be executed, filed and approved on or before November 29, 1907.

This Court especially reserves the right on showing made, to have additional bond or bonds given, from time to time, as it shall deem just and proper.

This order applies to freight originating on the lines of any party defendant hereto, in the States of Washington and Idaho, or either of said States, and each defendant herein over or on the lines of which shipment may be made.

Whenever any intervenor shall offer to any of the defendant carriers any of the commodities above specified for shipment as provided herein, he or it shall execute and deliver to the carrier an instrument in writing declaring he or it is the consignor of the commodities so offered for shipment, and that

the shipment is tendered in accordance with the provisions of this order.

Each of the intervenors is hereby ordered to furnish and deposit with the Clerk of this Court monthly reports showing each and every shipment made by him or it, giving the name of the shipper, the character and weight of each shipment, the points of origin and destination, and the amount paid or charged under rates existing prior to November 1, 1907, and the difference in amount between the amounts so paid or charged under rates existing prior to November 1, 1907, and the difference in amount between the amount so paid and charged and the amount that would accrue under said Tariff 850, and restrained by this order.

It is further ordered that a copy of this order and the order permitting the filing of the bill of intervention of the above named intervenors and a copy of the bill of intervention of the above named intervenors shall be served upon the solicitors for defendant, and that the defendants appear and plead thereto, and show cause, if any, at ten o'clock A. M., on November 29th, 1907, why this order should not have been entered and remain effective.

Done in open Court this 18th day of November, 1907.

C. H. HANFORD, Judge.

VI.

That thereafter the defendant Fidelity Lumber Company agreed to and with the Great Northern Railway Company that in accordance with the terms of said order of November 18, 1907, it would pay to the Great Northern Railway Company, for and on account of the shipment and transportation of lumber, shingles and forest products under said order, from points within to points without the States of Washington and Idaho, the difference, if any, between the amount paid for such service at the rate provided by said order of November 18, 1907, and

whatever rate should be finally established as the rate lawfully chargeable therefor on and after November 1, 1907.

VII.

That in pursuance of the said order of November 18, 1907, and of the agreement so made as aforesaid, this plaintiff received and caused to be transported for the said defendant lumber, shingles and forest products from points in Washington and Idaho, being points upon the lines of this plaintiff, to points of destination in other States, viz., between the points described in the tariffs above referred to, which tariffs were superseded by other tariffs to which this plaintiff was a party, and which by their terms became effective on November 1, 1907.

VIII.

That thereafter, and on or about June 2, 1908, the Interstate Commerce Commission, upon the complaint of the Potlatch Lumber Company, defendant, and others, and in pursuance of authority of law vested in said Commission, fixed and determined the rates legally chargeable for the transportation of lumber, shingles and other forest products between points in Washington and Idaho and the points in other States from which and to which the said products were transported by this plaintiff for the defendant, as set forth in the last preceding paragraph; and the difference between the rates paid for the transportation of such commodities for the defendant and the rates so fixed by the Interstate Commerce Commission as the lawful rates for the transportation thereof, amounted to \$2,805.65. That no portion of such difference above mentioned has been paid to this plaintiff by the defendant, or by any person whomsoever.

IX.

That by virtue of the facts above set forth, defendant is indebted to the plaintiff in the sum of \$2,805.65.

Wherefore this plaintiff demands judgment against the defendant in the sum of \$2,805.65, together with its costs and disbursements herein.

JAMES B. KERR, of Counsel,
F. V. BROWN,
FREDERIC G. DORETY,
Attorneys for Great Northern Railway Company.

State of Washington,
County of King.—ss.

Frederic G. Dorety, being duly sworn, says: That he is the attorney for the Great Northern Railway Company, the plaintiff in the within entitled action; that he knows the contents of the within Complaint, and that he believes the same, and the whole thereof, to be true; that the said plaintiff is a corporation organized under the laws of the State of Minnesota; that no officer thereof resides or is within the State of Washington.

And further affiant saith not.

FREDERIC G. DORETY.

Subscribed and sworn to before me this 9th day of February,
A. D. 1911.

(Seal)

L. M. KNOX,

Notary Public in and for the State of Washington, residing
at Seattle.

Indorsed: Complaint. Filed U. S. Circuit Court, Western
District of Washington, Feb. 9, 1911. Sam'l D. Bridges, Clerk.
W. D. Covington, Deputy.

*In the Circuit Court of the United States for the Western
District of Washington.*

GREAT NORTHERN RAILWAY COMPANY, a corporation,	}	No. 1948. ANSWER.
<i>Plaintiff,</i>		
vs.		
FIDELITY LUMBER COMPANY, a corporation,	}	
<i>Defendant.</i>		

Comes now the defendant above named, and for its answer to the complaint of plaintiff herein:

I.

Admits the allegations in paragraph "I" of said complaint.

II.

Admits the allegations in paragraph "II" of said complaint.

III.

Admits the allegations in paragraph "III" of said complaint.

IV.

Admits the allegations in paragraph "IV" of said complaint.

V.

Admits that the Potlatch Lumber Company, the Fidelity Lumber Company, and others, filed their complaint in intervention in said action No. 1565, mentioned in paragraph numbered "IV" of the complaint of plaintiff herein, by leave of Court, and therein and thereby prayed that they have the benefit of the original order in said action and of the intervention order therein, and that the defendants in said action be enjoined and restrained from collecting freight rates on lumber and forest products in excess of the rates in existence

October 31, 1907, from point of shipment to destination, and admits that a restraining order or injunction was issued on the 18th day of November, 1907, enjoining and restraining the defendants in said action as aforesaid, and permitting thereby the intervenors to have the benefit of the order of Court theretofore and then entered, upon compliance with the order of Court with reference to giving of bond; and admits that the order was as set forth in paragraph numbered "V" of the complaint of plaintiff herein; and defendant denies each and every other allegation, matter and thing contained in paragraph numbered "V" of the complaint of plaintiff herein.

VI.

The defendant admits the allegations of paragraph numbered "VI" of the complaint, but in this connection the defendant alleges that the Interstate Commerce Commission cannot legally establish a rate which is not subject to review by the Courts, and that the meaning of the order and the obligation upon defendant in making shipments was to pay such lawful rate as may be finally determined and established by the Courts.

VII.

Defendant admits that in pursuance of said order of November 18, 1907, and the original order entered in said action, the plaintiff received from defendant and caused to be transported from points in Washington and Idaho to points in other States, lumber and forest products as set forth in paragraph "VII" of the complaint. And defendant denies each and every other allegation, matter and thing contained in paragraph numbered "VII" of the complaint of plaintiff herein.

VIII.

Defendant admits that on or about June 2, 1908, the Interstate Commerce Commission, upon the complaint of the Potlatch Lumber Company, defendant, and others, in pursuance of law, fixed and determined the rates legally chargeable for

the transportation of lumber, shingles and other forest products between Washington and Idaho points and points in other States from which and to which said products were transported by plaintiff for the defendant; and defendant denies each and every other allegation, matter and thing contained in paragraph numbered "VIII" of the complaint of plaintiff herein.

Defendant alleges that under and by reason of the law the plaintiff is not entitled to the sum or amount set forth and mentioned in paragraph "VIII" of the complaint of plaintiff herein.

That plaintiff herein and intervenors in said original action do not agree as to what amount the shippers and intervenors should pay the plaintiff herein upon shipments made by said shippers and intervenors. That the shippers and intervenors contend that no greater rate can be charged than that fixed by the Commission from point of shipment to point of destination, and plaintiff herein contends that it is entitled to collect from said shippers and intervenors the Pacific Coast rate for shipments made from points in Eastern Washington and Northern Idaho to points each of the Pembina line, between November 1, 1907, and the date when the Interstate Commerce Commission fixed and determined the rates to be charged by the plaintiff and other carriers. That the claim made by the plaintiff is based purely and simply upon the Pacific Coast rate and not the rates in effect October 31, 1907, nor which were designated in the tariff which it is claimed became effective November 1, 1907, nor the amount fixed by the Interstate Commerce Commission as the rates from Eastern Washington and Northern Idaho to points of destination.

IX.

Defendant denies each and every allegation, matter and thing contained in paragraph numbered "IX" of the complaint of plaintiff herein.

Wherefore defendant prays that the plaintiff have and take

nothing by its action herein, and go hence without day and without relief, and that the defendant have and recover of and from the plaintiff its costs and disbursements herein.

H. M. STEPHENS,
Attorney for Defendant.

State of Washington,
County of Spokane.—ss.

H. M. Stephens, being first duly sworn, upon oath deposes and says:

That he is the attorney for the above named defendant in the above entitled action and makes this verification for and on its behalf. That he has read the foregoing answer and knows the contents thereof, and that the same is true, as he verily believes.

That this verification is made for and on behalf of defendant by affiant, for the reason that defendant has no officer within the district where this action is pending, or within the county of Spokane, where this verification is made, at the time of the making of said verification.

H. M. STEPHENS.

Subscribed and sworn to before me this 2nd day of February,
A. D. 1911.

(Seal)

ERNEST E. SARGEANT,
Notary Public in and for the State of Washington, residing at
Spokane, Wash.

Indorsed: Answer. Filed U. S. Circuit Court, Western District of Washington, Feb. 9, 1911. Sam'l D. Bridges, Clerk.
W. D. Covington, Deputy.

*In the Circuit Court of the United States for the Western
District of Washington.*

GREAT NORTHERN RAILWAY COMPANY, a corporation,	}	No. 1948. STIPULATION.
<i>Plaintiff,</i>		
vs.		
FIDELITY LUMBER COMPANY, a corporation,	}	
<i>Defendant.</i>		

For the purpose of the trial of this action it is agreed between the parties hereto as follows:

I.

That defendant and others made certain shipments of lumber, shingles and forest products over the lines of the Great Northern Railway Company from points in the States of Washington and Idaho to points east of said States, between November 18, 1907, and the date when the tariff filed by the plaintiff herein in accordance with the order of the Interstate Commerce Commission with respect to shipments of like character became effective.

II.

That on account of the shipments so made by the defendant, mentioned in paragraph I hereof, charges were paid according to the tariffs in force up to and including October 31, 1907. That if payments had been made by the defendant on account of such shipments, according to the rates declared to be applicable thereto by the Interstate Commerce Commission by its reparation orders and decisions, the plaintiff would have received from said defendant on account of such shipments, in addition to the sum so paid therefor, the amount of \$2,805.65.

III.

That subsequent to October 31, 1907, the Potlatch Lumber Company, the defendant, and others, intervened in the suit mentioned in paragraph IV of the complaint herein, and secured the restraining order set forth in paragraph V of the complaint herein.

IV.

That subsequent to November 18, 1907, the Potlatch Lumber Company, the defendant, and others, as complainants, filed their complaint against the Great Northern Railway Company and others with the Interstate Commerce Commission, a copy of which complaint is hereto attached, marked Exhibit A, and made a part hereof. That other complaints were also filed with and before the Interstate Commerce Commission by Coast lumbermen.

V.

That decisions were rendered by the Interstate Commerce Commission on June 2, 1908, in what were known as the Coast and Spokane lumber cases, to-wit: Number 1327, *Oregon & Washington Lumber Manufacturers' Association et al. v. U. P. R. R. Co. et al.*; number 1329, *Pacific Coast Lumber Manufacturers' Association et al. v. N. P. Ry. Co. et al.*; number 1335, *Southwest Washington Lumber Manufacturers' Association et al. v. N. P. Ry. Co. et al.*; number 1348, *Potlatch Lumber Company et al. v. N. P. Ry. Co. et al.* That said decisions are reported and set forth in volume 14 of the Interstate Commerce Commission Reports, pages 1 to 60, inclusive, which decisions and opinions are made a part of this stipulation, and the Court shall take same into consideration in deciding and determining this case, and shall also take into consideration any order or opinion in any or either of such cases which may appear in the reports of the Interstate Commerce Commission, and particularly the order of June 22, 1909, which is found at pages 465 to 468, inclusive, of volume 16 of the Interstate Commerce Commission Reports.

VI.

That upon receipt of the decision in case number 1348 before the Interstate Commerce Commission, counsel for complainants therein immediately wrote the Interstate Commerce Commission that it was not the desire or intention to waive reparation or refund, and requested that the matter be held open for further order in that respect.

That subsequently some of the Commissioners were interviewed orally and a petition for rehearing was sent to the Interstate Commerce Commission for filing, and thereupon a petition for rehearing and application to file a supplemental petition were denied, and on January 12, A. D. 1909, the Interstate Commerce Commission entered an order, a copy of which is hereto attached, marked Exhibit B, and made a part hereof.

VII.

That thereafter counsel for complainants in said case number 1348 further wrote the Interstate Commerce Commission that the same rule of reparation or refund was not being applied to shippers from the Spokane district; that is, the intervenors in said action in the United States Court hereinbefore referred to; and the counsel for said complainants also wrote to the Interstate Commerce Commission a letter upon that subject, a copy of which is hereto attached, marked Exhibit C, and made a part hereof.

That thereafter, to-wit, on the 12th day of April, A. D. 1909, the Interstate Commerce Commission entered an order, a copy of which is hereto attached, marked Exhibit D, and made a part hereof.

That thereafter complainants in said proceeding number 1348 before the Interstate Commerce Commission presented and filed and asked that complainants be heard upon their supplemental complaint, petitions for rehearing and application to amend the original complaint, copies of which are hereto attached, marked Exhibits E, F and G, and made a part hereof.

That thereafter on June 22, 1909, the Commission refused

to further consider or permit a further hearing in number 1348, of the supplemental complaint, petition for rehearing and application to amend the original complaint, which order is found at pages 465 to 468, inclusive, of volume 16 of the Interstate Commerce Commission Reports, and made a part of this stipulation.

VIII.

It is agreed that the rates in effect October 31, 1907, and prior thereto from Spokane and points east thereof, on lumber, shingles and forest products, to points east of the eastern boundary of Idaho were not the same, and there is filed herewith, identified by the signatures of counsel, a copy of the tariff in effect on and prior to October 31, 1907, setting forth the rates then applicable to such shipments.

IX.

The parties hereto expressly waive trial by jury herein, and hereby agree that this case shall be submitted to the Court for determination upon the pleadings and this stipulation of facts, without a jury.

GREAT NORTHERN RAILWAY COMPANY,
By FREDERIC G. DORETY,
JAMES B. KERR,

Its Attorneys.

FIDELITY LUMBER COMPANY,
By H. M. STEPHENS,

Its Attorney.

EXHIBIT "A."

BEFORE THE INTERSTATE COMMERCE COMMISSION.
POTLATCH LUMBER COMPANY,
ST. JOE LUMBER COMPANY,
B. R. LEWIS LUMBER COMPANY,
McGOLDRICK LUMBER COMPANY,
LAMB-DAVIS LUMBER COMPANY,
FIDELITY LUMBER COMPANY,

WASHINGTON MILL COMPANY,
ORRIN S. GOOD,
NATIONAL LUMBER COMPANY,
CASCADE LUMBER COMPANY,
SPRINGSTON LUMBER COMPANY,
WM. MUSSER LUMBER & MANUFACTURING COM-
PANY,
PHOENIX LUMBER COMPANY,
STANDARD LUMBER COMPANY,
KARAMIN LUMBER COMPANY,
E. A. HUMPHREY and J. R. HUMPHREY, a co-partner-
ship, doing business under the name of the ELKHORN
SAW MILLS,
BUCKEYE LUMBER COMPANY,
LINDSLEY BROTHERS COMPANY,
W. H. GERHART-BRADRICK LUMBER COMPANY, a
co-partnership composed of W. H. Gerhart and A. V.
Bradrick,
S. H. & L. LUMBER COMPANY, a co-partnership composed
of J. J. Herlihy, A. W. Lammers and Geo. W. Shaw,
IDAHO POLE COMPANY, a co-partnership composed of
W. L. Beckwith and John H. Fowler,
CHEWELAH MILL COMPANY,
THE REEVES-FARRELL LUMBER COMPANY,
POST FALLS LUMBER & MANUFACTURING COM-
PANY,
LACLEDE LUMBER COMPANY,
BONNERS FERRY LUMBER COMPANY,
DEHLBOM LUMBER COMPANY,
HUMBIRD LUMBER COMPANY,
THE DOVER LUMBER COMPANY,
SANDPOINT LUMBER & POLE COMPANY,
BARBER LUMBER COMPANY,
OVERLAND LUMBER COMPANY,
THE PANHANDLE LUMBER COMPANY,
GEORGE PALMER LUMBER COMPANY,

GRANDE RONDE LUMBER COMPANY,
STODDARD BROTHERS COMPANY,
SHOCKLEY & McMURREN LUMBER COMPANY,
GOODNOUGH MERCANTILE & STOCK COMPANY,
SUMMERVILLE LUMBER COMPANY,
WISCONSIN-OREGON LUMBER COMPANY, and
EMPIRE LUMBER COMPANY,

Complainants,

AGAINST

PETITION.

NORTHERN PACIFIC RAILWAY COMPANY,
GREAT NORTHERN RAILWAY COMPANY,
CHICAGO, BURLINGTON & QUINCY RAILROAD COM-
PANY,
SPOKANE FALLS AND NORTHERN RAILWAY COM-
PANY,
COLUMBIA & RED MOUNTAIN RAILWAY COMPANY,
KOOTENAI VALLEY RAILWAY COMPANY,
RED MOUNTAIN RAILWAY COMPANY,
SOUTHERN PACIFIC RAILWAY COMPANY,
UNION PACIFIC RAILWAY COMPANY,
OREGON SHORT LINE RAILROAD COMPANY,
OREGON RAILROAD & NAVIGATION COMPANY,
CHICAGO & NORTHWESTERN RAILWAY COMPANY,
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COM-
PANY,
CANADIAN PACIFIC RAILWAY COMPANY,
SPOKANE-INTERNATIONAL RAILWAY COMPANY,
COEUR d'ALENE & SPOKANE RAILWAY COMPANY,
SPOKANE & INLAND RAILWAY COMPANY,
MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAIL-
WAY COMPANY (Soo Line),
IDAHO & WASHINGTON NORTHERN RAILWAY COM-
PANY, and
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COM-
PANY OF WASHINGTON,

Defendants.

TO THE HONORABLE INTERSTATE COMMERCE COMMISSION:

The above named complainants respectfully show by this, their petition:

I.

That complainants are corporations, individuals and co-partnerships engaged in the lumber business and in the business of manufacturing and selling lumber, timber and forest products in the States of Oregon, Washington and Idaho.

That the mills and factories of a portion of the complainants are located in the eastern portion of Oregon, and the mills and factories of a portion of the complainants are located in the State of Washington east of the Cascade mountains, and the mills and factories of a portion of complainants are located in the State of Idaho.

That complainants are all located and doing business at what are known as interior points as distinguished from Pacific Coast points.

That complainants above named are interested in the sale and transportation of lumber, timber and forest products from the States of Oregon, Washington and Idaho to the States of North Dakota, South Dakota, Minnesota, Iowa, Illinois, Nebraska, Kansas, Missouri, Colorado, and other States.

II.

That defendants are corporations and common carriers of freight and engaged in transporting interstate commerce from the States of Washington and Idaho to the States mentioned in the last preceding paragraph and to other eastern points and States.

III.

That the interstate commerce and business in which the complainants are interested is wholly by rail from the States of Oregon, Washington and Idaho to the States of North Dakota, South Dakota, Minnesota, Iowa, Illinois, Nebraska,

Kansas, Missouri, Colorado, and other States, and the defendants, in connection with other common carriers of freight, haul and transport the lumber, timber and forest products of the complainants to the lumber consuming territories within the States (other than the States of Oregon, Washington and Idaho) above mentioned, and to many destinations in lumber consuming territories within the North Central and Eastern States of the Union.

IV.

That the rates on lumber, timber and forest products were voluntarily fixed by some of the defendants in 1893, and said rates so voluntarily fixed continued until November 1st, 1907.

That on or about the day of September, 1907, the defendants, in connection with other participating carriers, filed with the Interstate Commerce Commission and have published as effective November 1st, 1907, Tariffs Nos. I. C. C. 850 and A-2667 and have also filed a supplement or supplements thereof and thereto, whereby the rates on lumber, timber and forest products from points of shipments by complainants are advanced from three to twelve and a half cents per hundred pounds on said interstate commerce and shipments.

Complainants allege that the defendants have arbitrarily and by a conspiracy between them, purported to fix and establish the rates shown on said tariffs and supplements thereto and have so done in violation of law and the acts of Congress, and said advanced and increased rates are unreasonable and unjust and greatly in excess of a reasonable and fair rate for the services rendered or to be rendered complainants, or either of them.

That there was or is no cause or excuse for the raising of said rates, and in so doing the defendants acted wholly arbitrarily and fixed said rates much greater than the value of the services rendered or to be rendered, and more than the traffic will bear.

V.

Complainants allege that the said rates existing prior to November 1st, 1907, were excessive, exorbitant and unreasonable and more than a fair compensation for the services rendered, complainants or either of them, and complainants allege that they and each of them are entitled to a better rate than existed prior to November 1st, 1907, and that the rate for the territory in which the complainants do business should be at least 10 cents per hundred pounds less than from Pacific Coast points. Complainants allege that the rates which existed from 1893 to November 1st, 1907, from Pacific Coast points were and still are reasonable and fair rates for services rendered, and were and are a reasonable and fair tariff upon lumber, timber and forest products from Pacific Coast points.

That there is no reason for any difference in rates between Minnesota transfer points and Missouri River points and common points.

That from Pacific Coast points lumber, timber and forest products have to be hauled a much greater and longer distance over the same line, in the same direction, under substantially similar circumstances and conditions than the shipments of complainants, and that said Pacific Coast shipments have to be hauled over a mountain range and greater compensation is charged for the same kind of property for the shorter than for the longer haul, the shorter being included within the longer haul.

VI.

That the shipments of complainants are by continuous carriage from various lines and routes wholly by rail and almost entirely to interior points, and the Pacific Coast shipments pass by the mills and factories of many of the complainants herein.

VII.

That the freight rates and charges made upon interstate shipments of complainants are intrinsically and relatively unrea-

sonable, unjust and unlawful, and much in excess of the value of the services rendered or performed.

VIII.

That the manufacture of lumber and other forest products constitutes one of the largest and most important interests in each of the States of Oregon, Washington and Idaho.

That complainants and others engaged in the lumber business in the States of Oregon, Washington and Idaho have invested therein large sums of money, exclusive of materials on hand, standing timber and timber lands. That a large number of persons are directly engaged in and dependent upon said industry within said States and each of them, and there are large pay-rolls incident to said business.

That complainants and others made investments upon the faith that the rates existing prior to November 1st, 1907, would not be increased, but would be decreased.

That the tonnage of lumber has greatly increased in the last few years and furnishes a large proportion of the income of the defendants.

That if the rates effective November 1st, 1907, are continued, many of the complainants will have to cease operation and quit business and will not be able to compete in the markets where they have heretofore been selling their products.

If the rates effective November 1st, 1907, continue, only the higher grades of lumber can be moved, and millions of dollars in value of timber will be annually wasted and millions of dollars of timber have heretofore annually been wasted on account of the excessive and exorbitant rates on forest products.

IX.

That the carriers have greatly prospered upon and from the rates upon lumber, timber and forest products which existed from 1893 to November 1st, 1907.

That many of the defendants, and especially the Union Pacific Railroad Company, Great Northern Railway Company and

the Northern Pacific Railway Company have been more than liberal in paying operating expenses and dividends upon stock from earnings, and after paying operating expenses, dividends, and all fixed charges, said companies and each of them have paid and charged from net earnings large amounts for permanent improvements and betterments.

That the Union Pacific Railroad Company owns and controls the stock of the Oregon Short Line and the Oregon Railroad & Navigation Company. That the Great Northern Railway Company, Northern Pacific Railway Company and the Chicago, Burlington & Quincy Railroad Company are practically under one management and control. The Spokane International is the connecting line of the Canadian Pacific Railroad Company and the Soo Line.

X.

That the movement in lumber and forest products is constant and regular and would be greater and larger if defendants would furnish cars; that the said industry is not dependent upon seasons; that rapidity of movement is not necessarily required; that no special equipment is required; that the movement between interstate points is almost wholly in car-load lots; that the cars are loaded and partially equipped by the shipper and unloaded by the consignee without expense to the carriers; that the risk of loss or damage in transportation is slight; that lumber is an article of prime utility required to be transported long distances; that it is of large bulk and weight as compared to the value; that under existing rates the cost of transportation to consuming markets in other States in many cases exceeds the value of the forest products.

XI.

The complainants allege that the advance in freight rates effective November 1st, 1907, will greatly injure, and to a large extent destroy the lumber industry in the States of Idaho and the eastern portions of the States of Oregon and Washington.

The advance will amount to from twenty-five to fifty dollars per car on lumber to St. Paul, South Dakota, Missouri River and common points, and all of said advance goes to and will be received by the carriers transporting said products to said points from points of shipment by complainants.

The complainants, in support of their allegations set forth and above referred to, make a part hereof all rate sheets and schedules relating to lumber, timber and forest products from the States of Oregon, Washington and Idaho to other States and on file with the Interstate Commerce Commission, and the annual reports made by the defendants or either of them to the Interstate Commerce Commission.

Wherefore, complainants pray that defendants be required to promptly plead hereto and answer the charges herein; that after due and full hearing and investigation, an order be made commanding said defendants and each of them to wholly desist and cease from the aforesaid violations of the provisions of the acts of Congress to regulate commerce. That upon this complaint a full investigation be made, and such orders be entered as may be necessary to fix and insure the establishment and observance of and by the said defendants of a reasonable and just system of interstate freight rates from the States of Oregon, Washington and Idaho to other States upon lumber, timber and forest products, and such other and further orders as may by this Commission be deemed necessary or proper in the premises.

H. M. STEPHENS,
Attorney for Complainants.

State of Washington,
County of Spokane.—ss.

C. P. Lindsley, being first duly sworn, upon oath deposes and says that he is President of complainant Lindsley Brothers Company, a corporation; that he has read the foregoing com-

plaint and petition and knows the contents thereof, and the same is true as he verily believes.

C. P. LINDSLEY.

Subscribed and sworn to before me this 19th day of November, A. D. 1907.

(Notary Seal)

ERNEST E. SARGEANT,

Notary Public in and for the State of Washington, residing at Spokane, Wash.

EXHIBIT "B."

ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 12th day of January, A. D. 1909.

Present:

MARTIN A. KNAPP,
JUDSON C. CLEMENTS,
CHARLES A. PROUTY,
FRANCIS M. COCKRELL,
FRANKLIN K. LANE,
EDGAR E. CLARK,
JAMES S. HARLAN,

Commissioners.

No. 1348.

POTLATCH LUMBER COMPANY, ET AL.

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

This case was fully heard and determined by the Commission and a report and order were made and filed therein. Now comes complainant and petitions for rehearing and permission to file supplemental petition therein for the purpose of now praying for reparation.

In cases 1327, 1329 and 1335, the Commission dealt with complaints against a general advance in rates on lumber from the entire producing territory in the Pacific Northwest, described in the orders in the cases as all points of origin in Oregon, Washington, Idaho, Montana and British Columbia, and prescribed rates to be established in lieu of those that had been established by the carriers and declared that complainants were entitled to reparation on bases stated in the reports.

By supplemental orders of October 13, 1908, the Commission authorized defendants in said cases 1327, 1329 and 1335 to forthwith so pay reparation on all shipments as to which, under the decisions, it was due and required that periodical reports of payments so made should be furnished the Commission.

The Commission has decided that as to shipments originating on the lines of carriers not parties defendant in either of said cases 1327, 1329 and 1335 it will by special informal orders authorize reparation on the bases laid down in those cases.

Said cases 1327, 1329 and 1335 were and are held open for such further proceedings as may be necessary in the matter of reparation. It was not and is not intended that reparation shall be paid only to shippers actually parties to the said cases, but it was and is intended that reparation shall be paid without discrimination to all shippers from points of origin covered by said cases.

Supplemental complaint and petition for rehearing in case 1348, *Potlatch Lumber Company, et al., vs. Northern Pacific Railway Company, et al.*, alleges that defendants therein refuse to pay reparation to shippers from the Spokane district, apparently because such shippers were not parties to cases 1327, 1329 and 1335.

No reparation was prayed for in said case 1348. Complaint in said case 1348 did not bring in issue advanced rates of carriers, but it was a prayer for the establishment of new and higher differentials from Spokane territory under the Coast

rates. It was and is the intention of the Commission that shippers from the Spokane territory shall have reparation under said cases 1327, 1329 and 1335 as well as from any other territory covered thereby; but it was not and is not the intention of the Commission to award additional reparation because of the new differentials fixed in said case 1348. Therefore,

IT IS ORDERED: That the petition for rehearing and the application to file supplemental petition in case No. 1348 be denied, and if any parties thereto are not accorded reparation in accordance with the decisions in said cases 1327, 1329 and 1335 they may file their claims for reparation thereunder.

IT IS FURTHER ORDERED: That a copy of this order be served on all parties to this case.

A true copy.

(Seal)

E. A. MOSELEY,
Secretary.

EXHIBIT C (Copy).

Spokane, Wash., March 1, 1909.

Subject: Lumber Freight Rate Case—Case No. 1348, *Potlatch Lumber Co. et al. v. N. P. Ry. Co. et al.*

Hon. F. M. Cockrell,

Care of Interstate Commerce Commission,
Washington, D. C.

Dear Sir:

Your letter of the 23d ult. received and noted.

Sorry to say that the copies of orders in your letters contained do not to me "fully explain themselves."

At the time I wired you had in my possession copies of these orders and your letter to Mr. Beggs, but did not have Mr. Beggs' letter to the Commission.

I find in the original order in the Coast cases, your decision in part as follows:

“Complainants are entitled to reparation only on account of shipments upon which charges were collected in excess of the rates *between the same points* in effect October 31st, 1907; that in instances in which the rates herein prescribed are not lower than those in effect *between the same points* on October 31, 1907, such reparation should be measured by the difference between the rates actually paid and those herein prescribed; and that in instances in which the rates herein prescribed are lower than the rates in effect *between the same points* on October 31, 1907, such reparation should be measured by the difference between the rates actually paid and *those which were in effect between the same points* on October 31, 1907.”

Doubtless you remember that before the increased rates effective November 1, 1907, there were certain differentials between Coast points and points commencing about twenty-five miles east of Spokane, to Dakota and Minnesota and northerly points; and a five-cent differential between Coast points and all of this territory to Nebraska points.

Under your original order, reparation from this district would and should be based upon rates in effect October 31, 1907 (unless the rates fixed by the Commission are in excess thereof), and the rates effective November 1, 1907, that is, the difference between these two rates from points of shipment to points of destination.

While the shippers from this district feel that this is giving the railroad companies much the best of the situation, and that the shippers should in fact have the difference between the rate fixed by the Commission and the rate actually paid for the last two years, or at least from November 1, 1907, yet they have been content to accept and abide by your original order, being the difference in rate between the points of shipment and the points of destination gauged by the rates in effect October 31, 1907, and November 1, 1907, from and between points of shipment to points of destination (unless the rates fixed by the Commission are in excess thereof).

Your order of January 12, 1909, in case No. 1348 (Potlatch Lumber Company case), sets forth that it is intended that reparation shall be made and "paid without discrimination to all shippers from points of origin."

It seems to the writer hereof impossible to make reparation without discrimination on any other basis than difference in rates on the dates above mentioned between points of shipment and destination and without reference to the rate from any other point than the point of shipment.

Your order of January 12, 1909, states that case No. 1348 did not put in issue the advanced rate of November 1, 1907. This is undoubtedly an inadvertent error on the part of the Commission.

The complaint in No. 1348 sets forth the filing of Tariff No. I. C. C. 850 and A 2667 and supplements thereto and thereof and that the "advanced and increased rates are unreasonable and unjust and greatly in excess of a reasonable and fair rate for services rendered or to be rendered the complainants, or either of them."

It is further alleged in the petition in No. 1348, that the rates existing prior to November 1, 1907, were excessive, exorbitant and unreasonable and more than a fair compensation for the services rendered, and that the complainants were and are entitled to a better rate than existed prior to November 1, 1907. That the rates on lumber from Pacific Coast points prior to November 1, 1907, were and are a reasonable and fair tariff upon lumber from Coast points.

The prayer was that defendants be required to answer the charges, that a hearing be had and that an "order be made commanding said defendants and each of them to wholly desist and cease from the aforesaid violation of the provisions of the acts of Congress," and that "such orders be entered as may be necessary to fix and insure the establishment and observance of any by the said defendants of a reasonable and just system of interstate freight rates from the States of Oregon, Washington and Idaho to other States upon lumber,

timber and forest products, and such other and further orders as may by this Commission be deemed necessary or proper in the premises."

The evidence in the Coast cases was taken into consideration as a part of case No. 1348, by order of the Commissioner before whom oral testimony in No. 1348 was presented.

Section 13 of the Commerce Act provides and simply requires that the petition state the facts concerning the matters complained of, and does not require any prayer whatever.

Section 16 of the Commerce Act provides "that if, after hearing on the complaint made as provided in Section 136 of the Act, the Commission shall determine that any party is entitled to award of damages under the provisions of this act for a violation thereof, the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

Section 14 of the Act contains a somewhat similar provision.

The writer hereof has been led to believe that the Interstate Commerce Commission does not require compliance with the technical rules of law, and transacts business in an informal rather than a formal way.

Under technical rules of law, any party to an action is entitled to whatever relief the facts show they are entitled to, where defendants have appeared in the action, without reference to the prayer, and the prayer does not (when defendant appears) limit the rights in any manner or respect whatever, so long as relief granted consistent.

16 Ency. Pl. & Pr., pp. 776, 780, 781, 794, 795, 796;

Oteri v. Scalzo, 145 U. S. 589;

Tyler v. Savage, 143 U. S. 98;

Jones v. Van Doren, 130 U. S. 692;

Toyles v. Merchants Fire Ins. Co., 9 Wow. 406;

Boone v. Chiles, 10 Pet. 228;

Watts v. Waddle, 6 Pet. 403;

Dormitzer v. German, etc., Society, 23 Wash. 190, 191;

McKay v. Smith, 27 Wash. 442, 447;

Yarwood v. Johnson, 29 Wash. 643, 649.

Hence I conclude that it is not the intention of the Commission, by technicalities, or otherwise, to defeat any equitable or legal right of the shippers from this district. This result will, however, be done and accomplished, if the original and supplemental orders are construed to mean that reparation is not to be based upon the Coast rates in effect October 31, 1907, and advanced rates from this district effective November 1, 1907.

Unless this matter can be adjusted in response to this letter in accordance with our construction of the original order and what we believe to be even less than the rights and equities of the shippers from this district, we shall then desire to present another petition for rehearing and supplemental or amended complaint upon this reparation question, for we feel deeply and keenly that we will be wronged and that the shippers from this district will be discriminated against and much injured by any other adjustment of reparations than that hereinbefore suggested, to-wit: The difference in rates in effect October 31, 1907, and November 1, 1907, between the shipping points and points of destination, except where and when the rates fixed by the Commission exceed rates in effect October 31, 1907.

If this cannot be done promptly, kindly advise me so that we can arrange to present these petitions to the Commission on March 29th, or any other date after March 24th during the month of March that may seem agreeable to you.

The shippers of this district desire, if possible, to avoid resorting to the courts to recover this reparation, which they feel they are entitled to, and are willing to waive their claims as to difference between rates fixed by Commission and rates in effect October 31, 1907, if the matter can be speedily adjusted by Your Honorable Body. If they are required to go into court, they will, of course, insist upon reparation to the extent

of the rates fixed by the Commission for such period as the law authorizes recovery thereof.

On account of an important lumbermen's meeting here March 9th, shall be greatly pleased if you can consider the subject matter hereof and wire me (at my expense) the result of the Commission's consideration, so as to present the same to said meeting of lumbermen.

Very truly yours,

H. M. STEPHENS.

Exhibit "D."

INTERSTATE COMMERCE COMMISSION.

SUPPLEMENTAL ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 12th day of April, A. D. 1909.

Present:

MARTIN A. KNAPP,
JUDSON C. CLEMENTS.
CHARLES A. PROUTY,
FRANCIS M. COCKRELL,
FRANKLIN E. LANE,
EDGAR E. CLARK,
JAMES S. HARLAN,

Commissioners.

No. 1327.

OREGON & WASHINGTON LUMBER MANUFACTURERS'
ASSOCIATION, et al.,

vs.

UNION PACIFIC RAILROAD COMPANY, et al.

No. 1329.

PACIFIC COAST LUMBER MANUFACTURERS' ASSOCIATION, et al.,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, et al.

No. 1335.

SOUTHWEST WASHINGTON LUMBER MANUFACTURERS' ASSOCIATION,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, et al.

No. 1348.

POTLATCH LUMBER COMPANY, et al.,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, et al.

The Commission's expressions relative to reparation under its decisions in cases Nos. 1327, 1329, 1335 and 1348 have been interpreted in different ways by shippers and by officials of carriers. For the purpose of giving clear understanding as to the meaning and intent of the Commission and to thus afford a clearly defined and clearly understood basis for the payment of reparation in the cases named,

IT IS ORDERED: That the following be entered as a supplemental order in each of said cases, and that it stand as the ruling and order of the Commission with regard to reparation thereunder, in accord with the original orders in said cases and as same have been modified by further orders of the Commission of October 13, 1908, and January 12, 1909.

Cases Nos. 1327, *Oregon & Washington Lumber Manufacturers' Association et al. v. Union Pacific Railroad Company et al.*; 1329, *Pacific Coast Lumber Manufacturers' Association et al. v. Northern Pacific Railway Company et al.*; 1335, *Southwest Washington Lumber Manufacturers' Association v. Northern Pacific Railway Company et al.*; 1348, *Potlatch Lumber*

Company et al. v. Northern Pacific Railway Company et al., were decided contemporaneously and in connection with each other.

In cases Nos. 1327, 1329 and 1335 reparation was awarded. In case No. 1348 it was specifically stated that no reparation was claimed thereunder.

In order to avoid irreconcilable conflict between the orders in cases Nos. 1327, 1329 and 1335 on the one hand, and case No. 1348 on the other hand, it was necessary to include in the orders in cases Nos. 1327, 1329 and 1335 the requirements in adjusting rates in accordance therewith the differentials prescribed in case No. 1348 should also be observed and established.

It was the intention of the Commission that under cases Nos. 1327, 1329 and 1335 reparation should be awarded only as to shipments upon which charges had been collected in excess of what would have been collected upon the same shipment moving from the same point to the same point under the rates in effect October 31, 1907, except as such rates were changed under supplemental order of September 25, 1908, which authorized new or changed differentials on cedar lumber, shingles, and long timbers, over fir and spruce lumber; that as to a shipment which moved to a point on or west of the imaginary line drawn from Pembina to Port Arthur the reparation should be the difference between the charges collected and what would have been collected under the rates from the same point of origin to the same point of destination under the rates that were in effect on October 31, 1907, except as such rates were changed under supplemental order of September 25, 1908, which authorized new or changed differentials on cedar lumber, shingles, and long timbers, over fir and spruce lumber; that as to a shipment which moved to a point east of the Pembina-Port Arthur line the reparation should be the difference between the charges collected and what would have been collected under the increased rates authorized by the orders in cases Nos. 1327, 1329 and 1335, including any increase that may

have applied under the supplemental order of September 25, 1908, which authorized new or changed differentials on cedar lumber, shingles, and long timbers, over fir and spruce lumber; and that such measure of the reparation on any shipment to any destination should not be either increased or decreased by, or as a result of, additional changes in rates effected by the differentials prescribed in case No. 1348.

In other words, in cases Nos. 1327, 1329 and 1335, we dealt with complaints against increases in rates. Those increases to points on and west of the Pembina-Port Arthur line were condemned in whole, except as new or changed differentials on cedar lumber, shingles, or long timbers, over fir and spruce lumber, were established under authority of the supplemental order of September 25, 1908, and the reparation on each such shipment is to be measured by the full amount of the increase on the shipment over and above the rates in effect between the same points on October 31, 1907, except as new or changed differentials on cedar lumber, shingles, or long timbers, over fir and spruce lumber, were established under authority of the supplemental order of September 25, 1908. The increases in rates to points east of the Pembina-Port Arthur line were condemned in part; increases limited to 5 cents per 100 pounds, and new or changed differentials on cedar lumber, shingles, and long timbers, over fir and spruce lumber, were approved, and reparation on such shipments is to be measured by the amount of increase in rate so authorized.

In case No. 1348 we dealt with a petition for the establishment of new relationships between rates from certain points of origin, and established such relationships to be effective thereafter and not retroactively.

Reparation is, therefore, in all cases to be computed just as if case No. 1348 had not existed or had not been decided.

A true copy.

EDW. A. MOSELY,
Secretary.

Exhibit "E."

BEFORE THE INTERSTATE COMMERCE COMMISSION.

POTLATCH LUMBER COMPANY,	}	SUPPLEMENTAL COMPLAINT.
et al.,		
	<i>Complainants,</i>	
vs.		
NORTHERN PACIFIC RAILWAY	}	
COMPANY, et al.,		
	<i>Defendants.</i>	

TO THE HONORABLE INTERSTATE COMMERCE COMMISSION:

Come now the complainants in the above entitled action and proceeding and respectfully show to this Honorable Commission by way of Supplemental Complaint:

I.

That since the filing of the decision herein, this Honorable Commission made an order for reparation to and for shippers from the Spokane District, including complainants herein, and that said order for reparation has been misconstrued and misinterpreted and the defendants are refusing to pay reparation as heretofore ordered by this Commission. That the Commission and defendants are construing said order for reparation to mean that reparation is allowed shippers from the Spokane District to points east of the Pembina line fixed by the Commission only to the extent of the difference between the rates paid or charged under the tariff effective November 1, 1907, and the rates from the Coast effective October 31, 1907; whereas, in truth and in fact, this Commission ordered reparation be allowed from points of shipment to points of destination to the extent of the difference between the rates effective

October 31, 1907, and November 1, 1907, between the points of shipment and destination from the Spokane District and all other territory. That defendants are refusing to make or pay reparation on shipments to points east of Pembina line, except to the extent of the difference between the rates effective October 31, 1907, from the Coast and the rates effective November 1, 1907, from the Spokane District, and the Commission seem to be sustaining that view or refusal of defendants.

That complainants presented their supplemental complaint and Petition for Rehearing herein for reparation and application to file and present the same was denied by this Honorable Commission for the reason that an order had theretofore been made for reparation as contended for by complainants.

II.

That since the rate effective November 1, 1907, and since the filing of the Complaint herein, many of the complainants herein have made interstate shipments of lumber and forest products from the States of Washington and Idaho to other States and paid thereon the excessive rates according to the tariffs effective November 1, 1907—I. C. C. No. 850 and I. C. C. No. A-2667.

III.

That many of the complainants are parties by intervention in what are known as the Injunction Suits in Washington and Oregon and made interstate shipments under the provisions and protection of said injunctions which prevented the defendant railway companies from collecting rates in excess of those in effect prior to November 1, 1907; and notwithstanding said injunction, defendants are contending and insisting that complainants may and shall be required to pay greater rates than fixed by the Commission and greater rates than were in effect October 31, 1907.

That the evidence in the Coast cases was considered in this case before this Honorable Body and reparation made to Coast

shippers in accordance with the rates fixed by this Honorable Body in the Coast cases.

V.

That complainants herein, and all shippers in the Spokane District, are entitled to reparation in the same manner and upon the basis of the rates charged and the rates fixed by the Commission in this case.

VI.

That defendants have failed, neglected and refused to graduate differentials in Nebraska as ordered and directed by the Commission.

That defendants have put into effect at practically all points in Nebraska to which forest products move from the Spokane District a rate of 47 cents per hundred pounds; that thereby three-fourths of the area of Nebraska has no graduated differentials at all; that differentials are not properly, or at all, graduated with reference to the traffic moving to Nebraska from Spokane territory.

That defendants, in fixing differentials in Nebraska, have done so arbitrarily and in violation of the order of the Commission.

VII.

That complainants have made and presented herein a second Petition for Rehearing and Application to Amend Original Petition, to which reference is hereby made and the same is made a part hereof and it is prayed that the same be taken as a part hereof and that the hearing of this, complainants second Supplemental Complaint and complainants' second Petition for Rehearing and Application to Amend Original Petition be heard, and the time for hearing the same be fixed, at the same time, and considered and heard together.

WHEREFORE, complainants petition your Honorable Body for an order directing and requiring the defendants, and each of them, to make reparation to the complainants, and each

of them, and all other persons similarly situated, for all excessive freight rates and charges collected by defendants, or either of them, from complainants, or either of them, or any other shipper within what is known as the Spokane District, or elsewhere, and repay to said shippers, and each of them, the excess, if any, collected over and above the rates fixed by the Commission effective October 15, 1908, for such period as the same are not barred by the statute of limitations and the provisions of the Interstate Commerce Law; and that this Honorable Commission make certain, definite and plain its orders for reparation herein so that no further misapprehension or misunderstanding can hereafter be had or exist; that defendants be required to fix and put into effect equitable, fair and proper graduated differentials in Nebraska upon shipments from Spokane territory; and for such other relief and orders as may be meet and proper and equitable in the premises.

H. M. STEPHENS,
Attorney for Complainants.

State of Washington,
County of Spokane.—ss.

T. J. Humbird, being first duly sworn, upon oath deposes and says: That he is the manager of the Humbird Lumber Company, Ltd., a corporation, one of the Complainants herein; that he has read the above and foregoing Supplemental Complaint and knows the contents thereof, and that the same is true, as he verily believes.

T. J. HUMBIRD.

Subscribed and sworn to before me thisday of May, 1909.

Notary Public in and for said County and State, residing at
Spokane, Wash.

Exhibit "F."

BEFORE THE INTERSTATE COMMERCE COMMISSION.

POTLATCH LUMBER COMPANY,
ST. JOE LUMBER COMPANY,
B. R. LEWIS LUMBER COMPANY,
McGOLDRICK LUMBER COMPANY,
LAMB-DAVIS LUMBER COMPANY,
FIDELITY LUMBER COMPANY,
WASHINGTON MILL COMPANY,
ORRIN S. GOOD,
NATIONAL LUMBER COMPANY,
CASCADE LUMBER COMPANY,
SPRINGSTON LUMBER COMPANY,
WM. MUSSER LUMBER & MANUFACTURING COM-
PANY,
PHOENIX LUMBER COMPANY,
STANDARD LUMBER COMPANY,
KARAMIN LUMBER COMPANY,
E. A. HUMPHREY and J. R. HUMPHREY, a co-partnership,
doing business under the name of the ELKHORN SAW
MILLS,
BUCKEYE LUMBER COMPANY,
LINDSLEY BROTHERS COMPANY,
W. H. GERHART-BRADRICK LUMBER COMPANY, a
co-partnership composed of W. H. Gerhart and A. V.
Bradrick,
S. H. & L. LUMBER COMPANY, a co-partnership composed
of J. J. Herlihy, A. W. Lammers and Geo. W. Shaw,
IDAHO POLE COMPANY, a co-partnership composed of
W. L. Beckwith and John H. Fowler,
CHEWELAH MILL COMPANY,
THE REEVES-FARRELL LUMBER COMPANY,
POST FALLS LUMBER & MANUFACTURING COM-
PANY,

LACLEDE LUMBER COMPANY,
BONNERS FERRY LUMBER COMPANY,
DEHLBOM LUMBER COMPANY,
HUMBIRD LUMBER COMPANY,
THE DOVER LUMBER COMPANY,
SANDPOINT LUMBER & POLE COMPANY,
BARBER LUMBER COMPANY,
OVERLAND LUMBER COMPANY,
THE PANHANDLE LUMBER COMPANY,
GEORGE PALMER LUMBER COMPANY,
GRANDE RONDE LUMBER COMPANY,
STODDARD BROTHERS COMPANY,
SHOCKLEY & McMURREN LUMBER COMPANY,
GOODNOUGH MERCANTILE & STOCK COMPANY,
SUMMERVILLE LUMBER COMPANY,
WISCONSIN-OREGON LUMBER COMPANY, and
EMPIRE LUMBER COMPANY,

Complainants,

AGAINST

NORTHERN PACIFIC RAILWAY COMPANY,
GREAT NORTHERN RAILWAY COMPANY,
CHICAGO, BURLINGTON & QUINCY RAILROAD COM-
PANY,
SPOKANE FALLS AND NORTHERN RAILWAY COM-
PANY,
COLUMBIA & RED MOUNTAIN RAILWAY COMPANY,
KOOTENAI VALLEY RAILWAY COMPANY,
RED MOUNTAIN RAILWAY COMPANY,
SOUTHERN PACIFIC RAILWAY COMPANY,
UNION PACIFIC RAILWAY COMPANY,
OREGON SHORT LINE RAILROAD COMPANY,
OREGON RAILROAD & NAVIGATION COMPANY,
CHICAGO & NORTHWESTERN RAILWAY COMPANY,
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COM-
PANY,
CANADIAN PACIFIC RAILWAY COMPANY,

SPOKANE INTERNATIONAL RAILWAY COMPANY,
COEUR D'ALENE & SPOKANE RAILWAY COMPANY,
SPOKANE & INLAND RAILWAY COMPANY,
MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE
RAILWAY COMPANY (Soo Line),
IDAHO & WASHINGTON NORTHERN RAILWAY COM-
PANY, and
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COM-
PANY OF WASHINGTON,

Defendants.

No. 1348.

PETITION FOR REHEARING.

TO THE HONORABLE INTERSTATE COMMERCE COM-
MISSION:

Come now the complainants above named and petition this Honorable Body, the Interstate Commerce Commission, for a rehearing in the above entitled proceeding upon the question of refund and reparation, for the reasons and upon the grounds following, to-wit:

I.

That under the decision of this Honorable Body and the rates fixed by it, the complainants are entitled to reparation and refund of the difference and excess paid under the tariffs effective November 1, 1907, and prior thereto, in excess of the rates fixed by this Honorable Body, effective October 15th, 1908, for such period as the same are allowed under the laws of the United States and within the period of limitation therein provided.

II.

That this proceeding was instituted under the direction and supervision of a committee of the Lumbermen's Association of Spokane, Washington, which committee consists of William Deary, who is connected with the Potlatch Lumber Company,

T. J. Humbird, connected with the Humbird Lumber Company, and Jack Reardon, connected with the McGoldrick Lumber Company; that said companies are parties complainant. That at the time the said original petition was prepared and ready for verification, neither of the members of said committee were available to verify the same or to examine the same. That before the preparation of said petition, the said Committee understood that said petition would contain a prayer for reparation and that if the complainants were entitled thereto, reparation would be ordered in this proceeding. That the members of said committee never had any different idea, information or belief, until after the decision in this case was rendered. That the verification herein was made by Mr. C. P. Lindsley, who is not a member of said committee, and that while he read the same before verifying it, he did not do so critically or with a view of analyzing the form of said Petition.

That said Committee at all times understood that the employment of their attorney herein, H. M. Stephens, covered the matter of reparation and that the same would be presented in the original Petition and that the matter of reparation would be one of the questions in the case and be determined by this Honorable Body and an Order made in accordance with the determination thereof; that when said decision was rendered said Committee believed that reparation would still be ordered herein.

III.

That the complainants are informed and believe that their prayer herein is sufficient to warrant an Order for reparation and especially that portion of the prayer which prays for, "Such other and further Orders as may by this Commission be deemed necessary or proper in the premises."

That said Committee are informed and believe that the attorney of complainants informally requested an order allowing reparation herein promptly after notice of said decision.

IV.

That reparation was granted in what is known as the Coast Lumber Cases before this Honorable Body, and it would be inequitable and unjust to not grant to complainants herein reparation, at least to the same extent and in the same way as reparation was granted and ordered in what are usually known and designated as the Coast Lumber Cases, to which cases and Orders therein made, reference is hereby made and prayed to be taken as a part hereof.

V.

The complainants are advised and believe and have been informed that the Railway Companies are willing to make reparation if reparation be ordered or permitted by this Honorable Body.

VI.

That prior to the commencement of this proceeding and prior to the intervention of complainants, or any of them, in what is known as the injunction suit in the United States Court at Seattle, Washington, the defendants, through their agents and representatives, assured many of the complainants and their officers and agents, that voluntary reparation would be made on the basis of the rate fixed by this Honorable Body. That hereto attached and marked "Exhibit A" is the circular of some of the defendants, which circular was gotten out and distributed to and among the public and to and among the complainants herein, at or about the date thereof. That hereto attached and marked "Exhibit B" and "Exhibit C" are copies of telegrams from the traffic departments of what are known as the Hill roads.

VII.

That it would be inequitable and unjust and be denying to complainants herein equal protection of the law to disallow or refuse reparation in this proceeding and grant the same in what are known as the Coast Lumber Cases. And complain-

ants are informed and believe, that under Section 16a of the Interstate Commerce Law and the Rules and Regulations of the Interstate Commerce Commission, that they have the right and privilege of petitioning for a rehearing herein and for a modification of the Order heretofore made herein and complainants are informed and believe that this Honorable Body has ample power in the premises, and especially under Sec. 16 of the Interstate Commerce Act, to make reparation to the complainants and all other shippers in what is known as the Spokane District; that is, to make an Order that the defendants make reparation and refund and repay to the complainants and all other shippers, freight rates and charges heretofore collected upon lumber and other forest products, in excess of the rates fixed by the Interstate Commerce Commission by its decision herein.

That most of the complainants herein intervened in what is known as the Injunction Suit in the Federal Court of the Western District of the State of Washington wherein an injunction was granted against many of the defendants enjoining and restraining many of the defendants from collecting rates in excess of those in effect prior to November 1, 1907, and many of the complainants have shipped under said injunction. Some of the complainants, however, did not intervene in said injunction action, mainly for the reason that the defendants in that action assured the complainants not joining therein that reparation would be made on the same basis to all shippers if the rate effective November 1, 1907, should be reduced, or if any reduction should be made in the rates prior to that date. That it is necessary that an order for reparation be made herein so that the matters in said suit and litigation can be finally and fully adjusted and the said action finally disposed of.

WHEREFORE, Complainants petition your Honorable Body for a rehearing herein and for an Order directing and requiring the defendants, and each of them, to make reparation to the complainants, and each of them, and all other persons sim-

ilarly situated, for all excessive freight rates and charges collected by defendants, or either of them, from complainants, or either of them, or any other shipper within what is known as the Spokane District, and repay to said shippers, and each of them, the excess, if any, collected over and above the rates fixed by this Commission effective October 15, 1908, for such period as the same are not barred by the statute of limitations and the provisions of the Interstate Commerce Law, and for such other relief and Orders as may be meet and proper and equitable in the premises.

H. M. STEPHENS,
Attorney for Complainants.

State of Idaho,
County of Latah.—ss.

WILLIAM DEARY, being first duly sworn, upon oath deposes and says:

That he is the General Manager of the Potlatch Lumber Company, a corporation; that he has read the foregoing Petition for Rehearing and knows the contents thereof and that the same is true as he verily believes.

WILLIAM DEARY.

Subscribed and sworn to before me this 30th day of November, A. D. 1908.

(Seal)

R. S. SMITH,
Notary Public in and for said County and State, residing at
Potlatch, Idaho.

Exhibit A.

SPOKANE INTERNATIONAL RAILWAY CO.
SPOKANE & INLAND RAILWAY CO.
COEUR D'ALENE & SPOKANE RAILWAY CO., LTD.
IDAHO & WASHINGTON NORTHERN RAILROAD.

Spokane, Wash., Dec. 14, 1907.

McGoldrick Lumber Co.,

Cincinnati & O. R. & N. Tracks, City.

Gentlemen:

Referring to the proceedings now pending before the Interstate Commerce Commission between the Lumber Shippers and the Railroads, in which proceeding the reasonableness of the present tariff rates on east-bound lumber shipments are involved, we desire to say that our lines are not parties to suit in which injunction was issued, consequently to comply with the law we are compelled to use the new tariffs effective November 1st, 1907. If, however, the Interstate Commerce Commission decides that the new rates or any part of them are unreasonable, and shall direct or authorize such unreasonable excess to be refunded, we will promptly comply with such order.

GEO. H. MARTIN,

G. F. A., Spokane International Ry. Co.

J. H. LOTHROP,

G. F. A., Spokane & Inland Railway Co.,

Coeur d'Alene & Spokane Railway Co., Ltd.

R. F. BLACKWELL,

Vice-Pres. and Gen. Mgr., Idaho & Washington Northern R. R.

Exhibit B.

Chicago, Ill., Nov. 4-1907.

R. A. Kellogg,

Secretary Western Pine Manufacturers' Association,
Spokane, Washington.

Message third. It is our opinion new lumber rates will not be reduced by Interstate Commerce Commission, in which event final settlement will not give Pacific Coast lumbermen any advantage over you. If the Commission should decide the present rates unreasonable and order a reduction and award a reparation to shippers, it would apply alike to all shippers. Under circumstances, do not see how we could properly make any appeal to the Interstate Commerce Commission that would likely be effectual. If your people take different view of situation, you can intervene in present court proceedings in accordance with Judge Hanford's order.

D. MILLER.

4:26 a. m. 5th.

Exhibit C.

H. N. Kennedy,
Spokane.

St. Paul 11/6

Please advise Kellogg of Western Pine Assn. his message 4th sent me in Chicago just received by mail. Have seen answers made by Q. and G. N. Tell him we understand and greatly regret present situation but do not think it will long continue. Believe new tariff will be held just and reasonable, meantime some question about permanency of Judge Hanford's order and conditions attached thereto are such that shippers are not taking advantage of it to any great extent.

J. G. WOODWORTH.

Exhibit "G."

BEFORE THE INTERSTATE COMMERCE COMMISSION.

POTLATCH LUMBER COMPANY,	}	No. 1348.
et al.,		
<i>Complainants.</i>		
vs.		
NORTHERN PACIFIC RAILWAY	}	
COMPANY, et al.,		
<i>Defendants.</i>		

PETITION FOR REHEARING AND APPLICATION TO
AMEND ORIGINAL PETITION.

Come now the complainants above named and petition this Honorable Body, the Interstate Commerce Commission, for a rehearing in the above entitled proceeding upon the question of refund and reparation, for the reasons and upon the grounds following, to-wit:

I.

That under the decision of this Honorable Body and the rates fixed by it, the complainants are entitled to reparation and refund of the difference and excess paid under the tariffs effective November 1, 1907, and prior thereto, in excess of the rates fixed by this Honorable Body, effective October 15th, 1908, for such period as the same are allowed under the laws of the United States and within the period of limitation therein provided.

II.

That this proceeding was instituted under the direction and supervision of a committee of the Lumbermen's Association of Spokane, Washington, which committee consists of William Deary, who is connected with the Potlatch Lumber Company,

T. J. Humbird, connected with the Humbird Lumber Company, and Jack Reardon, connected with the McGoldrick Lumber Company; that said companies are parties complainant. That at the time the said original petition was prepared and ready for verification, neither of the members of said committee were available to verify the same or to examine the same. That before the preparation of said petition, the said committee understood that said petition would contain a prayer for reparation and that if the complainants were entitled thereto, reparation would be ordered in this proceeding. That members of said committee never had any different idea, information or belief, until after the decision in this case was rendered. That the verification herein was made by Mr. C. P. Lindsley, who is not a member of said committee, and that while he read the same before verifying it, he did not so do critically or with a view of analyzing the form of said petition.

That said committee at all times understood that the employment of their attorney herein, H. M. Stephens, covered the matter of reparation and that the same would be presented in the original petition and that the matter of reparation would be one of the questions in the case and be determined by this Honorable Body and an order made in accordance with the determination thereof; that when said decision was rendered said committee believed that reparation would still be ordered herein.

III.

That the complainants are informed and believe that their prayer herein is sufficient to warrant an order for reparation and especially that portion of the prayer which prays for, "such other and further orders as may by this Commission be deemed necessary or proper in the premises."

That said committee are informed and believe that the attorney of complainants informally requested an order allowing reparation herein promptly after notice of said decision.

IV.

That reparation was granted in what is known as the Coast Lumber Cases before this Honorable Body, and it would be inequitable and unjust to not grant to complainants herein reparation, at least to the same extent and in the same way as reparation was granted and ordered in what are usually known and designated as the Coast Lumber Cases, to which cases and orders therein made, reference is hereby made and prayed to be taken as a part hereof.

V.

That complainants are advised and believe and have been informed that the Railway Companies are willing to make reparation to the extent of the difference between the rates effective October 31, 1907, and the rates charged, paid or collected under the advanced rates effective November 1, 1907, between points of shipment and destination from the Spokane District if ordered so to do by this Honorable Body.

That this Honorable Body has made an order for reparation which seems to have been misconstrued by the defendants and the defendants are insisting that this Commission has only allowed reparation east of the Pembina line fixed by the Commission to the extent of the difference between Coast rates effective October 31, 1907, and the rates paid under the new rate effective November 1, 1907. That in many instances under the tariffs in effect October 31, 1907, and prior thereto, different rates existed from the territory a short distance east of Spokane and there was also a difference in rates between the Spokane District and the Coast territory to all Nebraska points on October 31, 1907.

VI.

That prior to the commencement of this proceeding and prior to the intervention of complainants, or any of them, in what is known as the Injunction Suit in the United States Court at Seattle, Washington, the defendants, through their

agents and representatives, assured many of the complainants and their officers and agents, that voluntary reparation would be made on the basis of the rate fixed by this Honorable Body. That hereto attached and marked "Exhibit A" is the circular of some of the defendants, which circular was gotten out and distributed to and among the public and to and among the complainants herein, at or about the date thereof. That hereto attached and marked "Exhibit B" and "Exhibit C" are copies of telegrams from the traffic departments of what are known as the Hill roads.

VII.

That it would be and is inequitable and unjust and would be and is denying to complainants herein due process of law and denying equal protection of the law to disallow or refuse reparation in this proceeding in any way different than is allowed in what is known as the Coast Lumber Cases; that is, the difference between points of shipment and destination under the rates in effect October 31, 1907, and that which was collectible or paid or charged under the advanced rate effective November 1, 1907; and complainants believe and insist that they are in fact entitled to reparation to the amount of the difference between the rates fixed by the Commission and those chargeable or collectible under the advanced rate effective November 1, 1907, except, of course, in instances where the Commission fixed a higher rate than was in effect October 31, 1907. Complainants allege that the original order allowing reparation in the Coast Cases, and which order the Commission has directed should be applied to the shippers from Spokane District, allows and permits reparation based upon rates from points of shipment to destination and not upon any arbitrary or imaginary rate or rates which were not in effect or established and which never did exist and do not now exist. And complainants are informed and believe, that under Section 16a of the Interstate Commerce Law and the Rules and Regulations of the Interstate Commerce Commission, that they

have the right and privilege of petitioning for a rehearing herein and for a modification of the orders heretofore made herein and complainants are informed and believe that this Honorable Body has ample power in the premises, and especially under Section 16a of the Interstate Commerce Act, to make reparation to the complainants and all other shippers in what is known as the Spokane District; that is, to make an order that the defendants make reparation and refund and repay to the complainants and all other shippers, freight rates and charges heretofore collected upon lumber and other forest products in excess of the rates fixed by the Interstate Commerce Commission by its decision herein.

VIII.

That if it be desirable or necessary in order to grant the prayer of this Petition and to grant the relief herein prayed for and to order reparation and refund as herein prayed for, that complainants be allowed to amend their original Petition by specifically praying for refund and reparation.

WHEREFORE, complainants petition your Honorable Body for a rehearing and for an order directing and requiring the defendants, and each of them, to make reparation to the complainants, and each of them, and all other persons similarly situated, for all excess in freight rates and charges collected by defendants, or either of them, from complainants, or either of them, or any other shipper within what is known as the Spokane District, and repay to said shippers, and each of them, the excess, if any, collected over and above the rates fixed by this Commission effective October 15, 1908, for such period as the same are not barred by the statute of limitations and the provisions of the Interstate Commerce Law; that if it be desirable or necessary in order to grant the prayer of this Petition and to grant the relief herein prayed for and to order reparation and refund as herein prayed for, that complainants be allowed to amend their original Petition by specifically praying for refund and reparation; and for such

other relief and orders as may be meet and proper and equitable in the premises.

H. M. STEPHENS,
Attorney for Complainants.

State of Washington,
County of Spokane.—ss.

T. J. Humbird, being first duly sworn, upon oath deposes and says: That he is the General Manager of the Humbird Lumber Company, Ltd., a corporation, one of the complainants herein, that he has read the foregoing Petition for Rehearing and Application to Amend Original Petition, knows the contents thereof, and that the same is true as he verily believes.

T. J. HUMBIRD.

Subscribed and sworn to before me this day of April,
A. D. 1909.

H. M. STEPHENS,
Notary Public in and for said County and State, residing at
Spokane, Wash.

Exhibit A.

SPOKANE INTERNATIONAL RAILWAY CO.
SPOKANE & INLAND RAILWAY CO.
COEUR D'ALENE & SPOKANE RAILWAY CO., LTD.
IDAHO & WASHINGTON NORTHERN RAILROAD.

Spokane, Wash., Dec. 14, 1907.

McGoldrick Lumber Co.,

Cincinnati & O. R. & N. Tracks, City.

Gentlemen:

Referring to the proceedings now pending before the Interstate Commerce Commission between the Lumber Shippers and the Railroads, in which proceeding the reasonableness of the

present tariff rates on east-bound lumber shipments are involved, we desire to say that our lines are not parties to suit in which injunction was issued, consequently to comply with the law we are compelled to use the new tariffs effective November 1st, 1907. If, however, the Interstate Commerce Commission decides that the new rates or any part of them are unreasonable, and shall direct or authorize such unreasonable excess to be refunded, we will promptly comply with such order.

GEO. H. MARTIN,

G. F. A., Spokane & Inland Railway Co.

J. H. LOTHROP,

G. F. A., Spokane & Inland Railway Co.,

Coeur d'Alene & Spokane Railway Co., Ltd.

R. F. BLACKWELL,

Vice-Pres. and Gen. Mgr., Idaho & Washington Northern R. R.

Exhibit B.

Chicago, Ill., Nov. 4-1907.

R. A. Kellogg,

Secretary Western Pine Manufacturers' Association,
Spokane, Wash.

Message third. It is our opinion new lumber rates will not be reduced by Interstate Commerce Commission in which event final settlement will not give Pacific Coast lumbermen any advantage over you. If the Commission should decide the present rates unreasonable and order a reduction and award a reparation to shippers, it would apply alike to all shippers. Under circumstances, do not see how we could properly make any appeal to the Interstate Commerce Commission that would likely be effectual. If your people take different view of situation, you can intervene in present court proceedings in accordance with Judge Hanford's order.

D. MILLER.

4:26 am. 5th.

Exhibit C.

St. Paul 11/6.

H. N. Kennedy,
Spokane.

Please advise Kellogg of Western Pine Assn. his message sent me in Chicago just received by mail. Have seen answers made by Q. and G. N. Tell him we understand and greatly regret present situation but do not think it will long continue. Believe new tariff will be held just and reasonable, meantime some question about permanency of Judge Hanford's order and conditions attached thereto are such that shippers are not taking advantage of it to any great extent.

J. G. WOODWORTH.

Indorsed. Stipulation. Filed U. S. Circuit Court, Western District of Washington, Feb. 18, 1911. Sam'l D. Bridges, Clerk. W. D. Covington, Deputy.

*United States Circuit Court, Western District of Washington,
Northern Division.*

GREAT NORTHERN RAILWAY	}	No. 1948.
COMPANY, a corporation,		
<i>Plaintiff,</i>		
vs.		
FIDELITY LUMBER COMPANY,	}	Filed April 15, 1911.
a corporation,		
<i>Defendant.</i>		

MEMORANDUM DECISION ON THE MERITS.

This action is collateral and supplementary to the litigation between lumber manufacturers and the railroad corporations operating in the states of Oregon, Washington, Montana and

Idaho, resulting from an attempt of the railroad companies to raise freight rates on lumber and forest productions in the year 1907. See 165 Fed. Rep. pages 1-12. The defendant in the present action was an intervener in that suit and obtained an injunction restraining the collection of freight on lumber shipments pending the litigation, in excess of the rate in effect prior to November 1, 1907, by compliance with the order of the Court requiring an injunction bond. The bond which was given obligated this defendant to pay the carriers the difference, if any, between the amount paid for transportation of lumber at the old rate and the rate finally established as the rate lawfully chargeable on and after November 1, 1907. The plaintiff, being one of the carriers affected by the injunction and entitled to the protection of the bond, performed service by the transportation of lumber for this defendant, eastward from points of shipments within the territory comprised in the Spokane district, which district is defined in the manner hereinafter to be shown. The object of this action is to collect from the defendant an amount claimed to be, the difference between the freight actually paid and the rate lawfully chargeable as finally established by the litigation for the transportation of lumber on and after November 1, 1907. The parties have by stipulation waived a jury and submitted the case to the Court for its decision on the pleadings, an agreed statement of facts, and briefs after an oral argument.

The injunction which this Court granted in cause No. 1565 was intended to maintain the *status quo* until the controversy as to freight rates on lumber between the lumber manufacturers of the Northwestern states and the railroads furnishing transportation facilities for their products, could be finally adjudicated after the Interstate Commerce Commission had determined the disputed questions as to the rates which might be reasonably and lawfully exacted. The carriers were not forbidden to charge the rates prescribed by their new tariffs intended to be effective on and after November 1, 1907, but were not permitted to *exact payment* of any part of said rate in excess of the

old rate in effect immediately previous to that date and as a condition of granting the injunction, the shippers of lumber were required to obligate themselves to pay the difference between the old rate and the new rate if the latter should be finally determined to be a lawful rate, or any lesser rate which might be established as the lawful rate by the Interstate Commerce Commission, or this court. Having assumed that obligation, this defendant made shipments of lumber on which the freight was paid at the old rate. The controversy as to rates was submitted to the Interstate Commerce Commission and that tribunal determined the matter in decisions and orders published in 14 Int. Com. Com. Rep. pages 1 to 60, and 16 Int. Com. Com. Rep. pages 465 to 468. As a basis for making its decision the Interstate Commerce Commission divided the territory within which lumber shipments originated, into three parts, the first being the Coast Division, comprising territory west of the summit of the Cascade range of mountains; the second being the eastern slope of the Cascade range; and the third designated herein as the Spokane District, (the City of Spokane being located centrally therein,) comprising territory east of the second division and it also drew an imaginary divisional line extending from Pembina, North Dakota, southward through designated points to Port Arthur in the State of Texas. The contentions of the shippers from the different divisions of territory were separately presented to the Interstate Commerce Commission but decided simultaneously and by a uniform rule. The shippers from the Spokane District which includes this defendant, not only opposed the increase of rates but also demanded a substantial reduction of rates on their shipments, by way of a differential from the rates on shipments from points within the Coast Division. The decisions of the Interstate Commerce Commission in practical results, amounted to a restoration of the old rate prevailing prior to November 1, 1907, on all shipments to points west of the Pembina, Port Arthur Line and prescribed a new rate higher than the old rate but less than the new rate, prescribed by the carriers in their schedules filed to be effective after

November 1, 1907, and shippers from the districts east of the Cascade Mountains were allowed differentials cutting the old rate for service in transportation of their lumber to points west of the Pembina, Port Arthur line, and making the increased rate on their shipments to points east of said line less than the increased rate on shipments from points within the Coast Division. The report of the Interstate Commerce Commission contains the following statement: "While permitting some rates to be increased this adjustment also reduces some rates below what they were immediately prior to the increase complained of." I am unable to discover any reduction below the old rates other than that effected by the allowance of differentials on shipments from points east of the Cascade Mountains to points west of the Pembina line. The Interstate Commerce Commission allowed reparation to shippers from the Coast points who were supposed to have paid on shipments pending the litigation in excess of the rates which were in effect on October 31, 1907, but refused to allow reparation to shippers from points within the Spokane District and this apparent discrimination is the ground upon which this defendant resists the demand for an additional payment on account of its shipments. The real issue to be decided is defined by the defendant's answer as follows: "The shippers and interveners contend that no greater rate can be charged than that fixed by the Commission from point of shipment to point of destination, and plaintiff herein contends that it is entitled to collect from said shippers and interveners the Pacific Coast rate for shipments made from points in Eastern Washington and Northern Idaho to points east of the Pembina line, between November 1, 1907, and the date when the Interstate Commerce Commission fixed and determined the rates to be charged by the plaintiff and other carriers."

For the decision of this case in view of the action of the Interstate Commerce Commission, the Court must have in mind six different rates which for convenience will be referred to as Tariffs numbers one to six as follows:

Tariff 1. The old rate in effect prior to November 1, 1907.

Tariff 2. The increased rate per schedule filed by the railroad companies to be in effect on and after November 1, 1907.

Tariff 3. The old rate restored by the Interstate Commerce Commission, applicable to shipments from points in the Coast Division to points west of the Pembina, Port Arthur line.

Tariff 4. The increased rate modified by the Interstate Commerce Commission applicable to shipments from points in the Coast Division to points east of the Pembina, Port Arthur line.

Tariff 5. The differential rate applicable to shipments from points east of the Cascade Mountains to points west of the Pembina, Port Arthur line.

Tariff 6. The differential rate applicable to shipments from points east of the Cascade Mountains to points east of the Pembina, Port Arthur line.

Tariffs 5 and 6 were made effective on and after October 15, 1908.

The restored rate and the modified increased rate, per Tariffs 3 and 4 were made effective on and after November 1, 1907.

Reparation allowed by the Interstate Commerce Commission was only on account of shipments upon which charges were collected in excess of the rate in effect on October 31, 1907; specifically as follows:

"In instances in which the rates herein prescribed are not lower than the rates which were in effect between the same points on October 31, 1907, such reparation should be measured by the difference between the rates actually paid and those herein prescribed; and that in instances in which the rates herein prescribed are lower than the rates which were in effect between the same points on October 31, 1907, such reparation should be measured by the difference between the rates actually paid and those which were in effect between the same points on October 31, 1907."

So far as the litigants in this court were affected, there could be no drawback of money paid, because, the injunction protected them pending the litigation and they actually paid only the rates per Tariff 1 and they were obligated by the conditions imposed

by the Court in granting the injunction, to pay on shipments made during the pendency of the litigation, the difference between the modified increased rate per Tariff 4 and the old rate per Tariff 1. The apparent discrimination against shippers from points within the Spokane District suggested by the defendant disappears when the facts are illustrated by ciphering. The theory of the defense appears to be that the differential rates prescribed by the Interstate Commerce Commission should have been made effective during the period of litigation so that shippers from the Spokane District should be entitled to reclaim the amount actually paid on their shipments to points west of the Pembina, Port Arthur line in excess of the differential rate per Tariff 5, and that the amount of such excess should stand as an equitable set-off against the excess above the old rate per Tariff 1, on shipments to points east of the Pembina, Port Arthur line; and have the benefit of the differential rate per Tariff 6 as to such shipments. This theory is obviously untenable, because, the Interstate Commerce Commission allowed no such drawback to any shipper. If the defendant had paid the rates per Tariff 2, it would have a just claim for reparation equal to the difference between the amount paid and the modified increased rate per Tariff 4, but there is no such difference because it has only paid according to the old rate per Tariff 1.

It is the opinion of the Court that the Interstate Commerce Commission, in the exercise of lawful authority, made the modified increased rates per Tariffs 3 and 4 effective on and after November 1, 1907, in lieu of Tariff 2, and made the differential rates applicable only to transactions subsequent to the time of making that change in the pre-existing rates. It is also the opinion of the Court that, by the conditions imposed by the Court in granting the injunction and the terms of the injunction bond, the defendant is precluded from exacting any drawback on account of freight paid for shipments made prior to the determination by the Interstate Commerce Commission of the controversy, and that the modified increased rate per Tariff 4, is the lawful rate which the defendant became obligated to pay.

By the stipulated facts, it appears that the amount due to the plaintiff is \$2,805.65, and the Court directs that a judgment be entered in favor of the plaintiff for that amount with legal interests and taxable costs.

C. H. HANFORD, Judge.

Indorsed: Memorandum Decision on the Merits. Filed U. S. Circuit Court Western District of Washington, Apr. 15, 1911. Sam'l D. Bridges, Clerk. W. D. Covington, Deputy.

In the United States Circuit Court for the Western District of Washington, Northern Division.

GREAT NORTHERN RAILWAY COMPANY, a corporation,	} Plaintiff,	} No. 1948.
vs.		
FIDELITY LUMBER COMPANY, a corporation,	} Defendant.	

SUPPLEMENTAL STIPULATION.

It is hereby stipulated and agreed that this suit involves shipments east of what is designated as the Pembina line in the decisions of the Interstate Commerce Commission.

It is agreed that on all shipments made by defendant it paid the rate in effect October 31, 1907.

It is agreed that from the date of the order of the Commission in the Potlatch Company case, the rate as to all shipments thereafter made was fixed at two cents per hundred pounds in

excess of the rate paid and in excess of the rate in effect October 31, 1907.

F. V. BROWN,
F. G. DORETY,
Attorneys for Plaintiff.
H. M. STEPHENS,
Attorney for Defendant.
By E. E. SARGEANT.

Indorsed: Supplemental Stipulation. Filed U. S. Circuit Court, Western District of Washington, July 5, 1911. Sam'l D. Bridges, Clerk. B. O. Wright, Deputy.

*United States Circuit Court, Western District of Washington,
Northern Division.*

GREAT NORTHERN RAILWAY COMPANY, a corporation,	}	No. 1948.
Plaintiff,		
vs.		
FIDELITY LUMBER COMPANY, a corporation,	}	
Defendant.		

FINDINGS AND CONCLUSIONS.

The above entitled action coming on to be heard this 21st day of February, A. D. 1911, F. G. Dorety and James B. Kerr appearing for the plaintiff and H. M. Stephens appearing for the defendant, and it appearing that all of the issues raised by the pleadings herein have been stipulated and agreed to by the parties hereto, the court now finds the facts in this case to be as set forth in the stipulations of fact on file herein.

Dated this 6th day of July, A. D. 1911.

C. H. HANFORD, Judge.

CONCLUSIONS OF LAW.

As conclusions of law from the foregoing, the Court finds that the plaintiff is entitled to judgment against the defendant in the sum of Two Thousand Eight Hundred Five and Sixty-five One-hundredths (\$2,805.65) Dollars, together with its costs and disbursements to be taxed and inserted in the judgment.

Dated this 6th day of July, A. D. 1911.

By the Court:

C. H. HANFORD, Judge.

Defendant's exception allowed.

C. H. HANFORD, Judge.

We hereby acknowledge service of the foregoing Findings and Conclusions, and the receipt of a true copy thereof, this..... day of July, 1911.

Attorneys for Defendant.

Indorsed: Findings and Conclusions. Filed U. S. Circuit Court, Western District of Washington, July 6, 1911. Sam'l D. Bridges, Clerk. B. O. Wright, Deputy.

*United States Circuit Court, Western District of Washington,
Northern Division.*

GREAT NORTHERN RAILWAY
COMPANY, a corporation,

Plaintiff,

vs.

FIDELITY LUMBER COMPANY, a
corporation,

Defendant.

No. 1948.

JUDGMENT.

This action having come on regularly to be heard on the 21st of February, James B. Kerr and F. G. Dorety appearing for the

plaintiff, and H. M. Stephens appearing for the defendant, and the Court having made its findings and conclusions herein in favor of the plaintiff.

Now, therefore, it is ordered, adjudged and decreed that the plaintiff have and recover judgment against the defendant in the full sum of Two Thousand Eight Hundred Five and Sixty-five One-hundredths (\$2,805.65) Dollars, together with its costs and disbursements herein in the sum of \$10.00.

Dated this 6th day of July, A. D. 1911.

By the Court:

C. H. HANFORD, Judge.

Indorsed: Judgment. Filed U. S. Circuit Court, Western District of Washington, July 6, 1911. Sam'l D. Bridges, Clerk. B. O. Wright, Deputy.

*United States Circuit Court, Western District of Washington,
Northern Division.*

GREAT NORTHERN RAILWAY COMPANY, a corporation,	} No. 1948.
<i>Plaintiff,</i>	
vs.	
FIDELITY LUMBER COMPANY, a corporation,	}
<i>Defendant.</i>	

PETITION FOR WRIT OF ERROR.

To the Honorable Judges of the Circuit Court:

Comes now the above named defendant, by its attorney, and complains that in the records and proceedings had in the above entitled cause and also in the rendition of the judgment therein in the above named court at the.....term, A. D. 1911,

against said defendant and in favor of the plaintiff, manifest error hath happened to the prejudice of said defendant.

Wherefore said defendant prays for an allowance of a writ of error and for an order fixing the amount of bond for a supersedeas in said cause, and for such other orders and process as may cause the same to be corrected by the United States Circuit Court of Appeals for the Ninth Circuit, and that upon the giving of such security all other proceedings in this court be suspended and stayed until the determination of said writ of error by said Circuit Court of Appeals; and defendant hereby prays an order allowing said defendant to prosecute a writ of error to the said Circuit Court of Appeals.

Dated this 20th day of July, A. D. 1911.

H. M. STEPHENS,
Attorney for Defendant.

Indorsed: Petition for Writ of Error. Filed U. S. Circuit Court, Western District of Washington, June 22, 1911. Sam'l D. Bridges, Clerk. B. O. Wright, Deputy.

*United States Circuit Court, Western District of Washington,
Northern Division.*

GREAT NORTHERN RAILWAY COMPANY, a corporation,	} No. 1948.
<i>Plaintiff,</i>	
vs.	
FIDELITY LUMBER COMPANY, a corporation,	
<i>Defendant.</i>	

ORDER ALLOWING WRIT OF ERROR AND FIXING BOND.

Upon motion of the attorney for the above named defendant, and upon filing a petition for writ of error and an assignment

of errors, it is ordered that a writ of error be and the same is hereby allowed to the Circuit Court of Appeals for the Ninth Circuit, to have review in said Circuit Court of Appeals of judgment and orders heretofore made, rendered and entered in the above entitled action, and that the amount of bond on said writ of error be and the same is hereby fixed at two hundred dollars (\$200.00), the said bond so executed to operate as a bond for costs of appeal, damages and interest.

Done in open court this 22d day of July, A. D. 1911.

C. H. HANFORD, Judge.

Indorsed: Order Allowing Writ of Error and Fixing Bond.
Filed U. S. Circuit Court, Western District of Washington, July 22, 1911. Sam'l D. Bridges, Clerk. B. O. Wright, Deputy.

*United States Circuit Court, Western District of Washington,
Northern Division.*

GREAT NORTHERN RAILWAY
COMPANY, a corporation,

Plaintiff,

vs

FIDELITY LUMBER COMPANY, a
corporation,

Defendant.

No. 1948.

ASSIGNMENT OF ERRORS.

Comes now the defendant in the above entitled action, and makes and files the following assignment of errors upon which it will rely for the prosecution of writ of error in the above entitled action, to-wit:

I.

That the United States Circuit Court in and for the Western District of Washington, holding terms at Seattle, erred in rendering judgment for the plaintiff Great Northern Railway Company.

II.

The said Court erred in rendering judgment for any amount in excess of two-fifths of the amount sued for.

III.

The said Court erred in its conclusions of law, to the effect, and holding, that plaintiff is entitled to judgment herein.

IV.

The said Court erred in not holding and determining that plaintiff was entitled to recover not to exceed two-fifths of the amount sued for.

V.

The said Court erred in holding that plaintiff was entitled to judgment for anything in excess of the rates fixed by the Interstate Commerce Commission, to-wit, forty-two cents per hundred pounds, from point of shipment in this action to points of destination.

VI.

The Court erred in not determining that it would be depriving the defendant of its property without due process of law, to require it to pay an unjust and unreasonable rate, or any rate in excess of that fixed by the Interstate Commerce Commission as to future rates.

VII.

The said Court erred in holding that for reparation purposes the Interstate Commerce Commission fixed the Pacific Coast rate to points of destination of shipments involved in

this action, which Pacific Coast rate is fixed for a distance of more than four hundred miles more haul, as compared with the haul from the point of shipment to points of destination involved in this action.

VIII.

The said Court erred in not holding that it was beyond the power of the Interstate Commerce Commission not to allow reparation on the basis fixed as reasonable rates by the Interstate Commerce Commission.

IX.

Said Court erred in not holding that reparation must be upon the basis of a reasonable rate, and erred in not holding that the reasonable rate for reparation must either have been the rate in effect October 31, 1907 (prior to the effective date of the proposed advanced rates which were condemned by the Commission), or the rate fixed by the Interstate Commerce Commission.

X.

The said Court erred in reaching the conclusion of law and rendering judgment for the plaintiff herein, because the judgment and the result thereof is the taking of the property of the defendant without due process of law, and the effect of the judgment rendered by the Court is that defendant is required thereby (if the same be not reversed) to pay an illegal, unreasonable, unjust and unlawful freight rate upon the shipments involved in this action.

Wherefore the defendant, and plaintiff in error, prays that the judgment of the Circuit Court of the United States for the Western District of Washington, holding terms at Seattle, be reversed, and that said Circuit Court be directed to grant a new trial of said case and to render and enter judgment herein against defendant, for a sum not exceeding two-fifths of the amount sued for herein; and prays for such disposition of this

action as may be made in accordance with law and the statutes of the United States in such cases made and provided.

And the defendant, and plaintiff in error, will ever pray.

H. M. STEPHENS,

Attorney for Defendant and Plaintiff in Error.

Indorsed: Assignment of Errors. Filed U. S. Circuit Court, Western District of Washington, July 22, 1911. Sam'l D. Bridges, Clerk. B. O. Wright, Deputy.

*United States Circuit Court, Western District of Washington,
Northern Division.*

GREAT NORTHERN RAILWAY COMPANY, a corporation,	}	No. 1948.
<i>Plaintiff,</i>		
vs.		
FIDELITY LUMBER COMPANY, a corporation,		
<i>Defendant.</i>		

BOND ON WRIT OF ERROR.

Know all men by these presents, that we, Fidelity Lumber Company, a corporation, as principal, and *The United States Fidelity & Guaranty Company, a corporation, of Baltimore, Md.*, as surety, are held and firmly bound unto the Great Northern Railway Company, a corporation, plaintiff above named, in the sum of Two hundred dollars (\$200.00), to be paid to the said Great Northern Railway Company, a corporation, its successors and assigns, to and for the payment of which well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, and each thereof, jointly and severally and firmly by these presents.

Sealed with our seals, and dated this 21st day of July, A. D. 1911.

Whereas the above named defendant has sued out a writ of error to the United States Circuit Court of Appeals, Ninth Circuit, to reverse the judgment in the above entitled cause, made, rendered and entered by the Circuit Court of the United States for the Western District of Washington, holding terms at Seattle.

Now, therefore, the condition of this obligation is such that if the above named defendant and plaintiff in error shall prosecute said writ to effect, shall prosecute said writ to effect and answer and pay all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

FIDELITY LUMBER COMPANY,

By H. M. STEPHENS,

Its Attorney.

THE UNITED STATES FIDELITY & GUARANTY
COMPANY.

(Seal)

By W. H. WINFREE,

Its Attorney in Fact.

THE UNITED STATES FIDELITY & GUARANTY
COMPANY,

By J. GRIER LONG,

Its Attorney in Fact.

Approved July 22, 1911.

C. H. HANFORD, Judge.

Indorsed: Bond on Writ of Error. Filed U. S. Circuit Court, Western District of Washington, July 22, 1911. Sam'l D. Bridges, Clerk. B. O. Wright, Deputy.

*United States Circuit Court, Western District of Washington,
Northern Division.*

GREAT NORTHERN RAILWAY COMPANY, a corporation,	}	No. 1948.
<i>Plaintiff,</i>		
vs.		
FIDELITY LUMBER COMPANY, a corporation,		
<i>Defendant.</i>		

WRIT OF ERROR.

United States of America, ss.

*The President of the United States to the Honorable Judges of
the Circuit Court of the United States for the Western Dis-
trict of Washington, Greeting:*

Because, in the records and proceedings, as also in the rendition of the judgment, of a plea which is in said Circuit Court before you, between Great Northern Railway Company, a corporation, plaintiff (defendant in error), and Fidelity Lumber Company, a corporation, defendant (plaintiff in error), manifest error hath happened, to the great damage and prejudice of the said defendant (plaintiff in error), as by its complaint and petition appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and plainly, you send the records and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, in the City of San Francisco, in the State of California, together with this writ, so as to have the same at the City of San Francisco in the State of California, on the

.....day of, A. D. 1911, that the record and proceedings aforesaid, being inspected in said Circuit Court of Appeals, may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 22nd day of July, A. D. 1911, and of the independence of the United States 136.

(Seal)

SAM'L D. BRIDGES,

Clerk of the United States Circuit Court for the Western District of Washington.

By R. M. HOPKINS, Deputy Clerk.

Allowed by

C. H. HANFORD, District Judge.

Indorsed: No. 1948. United States Circuit Court, Western District of Washington, Northern Division. Great Northern Railway Company, a corporation, Plaintiff, vs. Fidelity Lumber Company, a corporation, Defendant. Writ of Error. Filed U. S. Circuit Court, Western District of Washington, July 22, 1911. Sam'l D. Bridges, Clerk. B. O. Wright, Deputy. H. M. Stephens, 409 Peyton Block, Spokane, Washington, Attorney for Defendant.

*United States Circuit Court, Western District of Washington,
Northern Division.*

GREAT NORTHERN RAILWAY COMPANY, a corporation,	}	No. 1948.
<i>Plaintiff,</i>		
vs.		
FIDELITY LUMBER COMPANY, a corporation,		
<i>Defendant.</i>		

CITATION AND RETURN.

United States of America, ss.

*The President of the United States to Great Northern Railway
Company, F. V. Brown and Frederic G. Dorety, its attor-
ney, Greeting:*

You and each of you are hereby cited and admonished to be and appear at and in the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco in the state of California, within thirty days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the Western District of Washington, at Seattle, wherein the Great Northern Railway Company is plaintiff in the action and defendant in error, and the Fidelity Lumber Company is defendant in the action and plaintiff in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice done to the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the

Supreme Court of the United States, this 22nd day of July, A. D. 1911, and of the independence of the United States 136.

(Seal)

C. H. HANFORD,

United States District Judge, presiding in the Circuit Court
of the United States for the Western District of Washington.

Attest:

SAM'L D. BRIDGES, Clerk.

By R. M. HOPKINS, Dep. Clerk.

United States of America,
Western District of Washington.—ss.

I hereby certify that I served the within citation upon F. V. Brown, at Seattle, Washington, being in the Northern Division of the within and above named United States Circuit Court, on the 29th day of July, A. D. 1911, by then and there delivering to him personally a true copy of the within citation.

Dated this 29th day of July, A. D. 1911.

JOSEPH R. H. JACOBY,

United States Marshal.

Marshal's fees, \$2.12-100.

By GEO. B. DEVENPECK, Deputy.

No. 1948. United States Circuit Court, Western District of Washington, Northern Division. Great Northern Railway Company, a corporation, Plaintiff, vs. Fidelity Lumber Company, a corporation, Defendant. Citation and Return. Filed U. S. Circuit Court, Western District of Washington, July 31, 1911. Sam'l D. Bridges, Clerk. B. O. Wright, Deputy. H. M. Stephens, 409 Peyton Block, Spokane, Washington, Attorney for Defendant.

*United States Circuit Court, Western District of Washington,
Northern Division.*

GREAT NORTHERN RAILWAY COMPANY, a corporation, <i>Plaintiff (and defendant in error),</i>	}	No. 1948.
vs.		
FIDELITY LUMBER COMPANY, a corporation, <i>Defendant (and plaintiff in error).</i>		

PRAECIPE FOR TRANSCRIPT.

To the Clerk of the above named Court:

Please make out and send to the Circuit Court of Appeals copies of the following matters and things in the above mentioned case, to-wit:

1. Complaint.
2. Answer.
3. Stipulation of facts.
4. Decision of Court.
5. Supplemental stipulation of facts.
6. Finding of facts and conclusions of law.
7. Judgment.
8. Petition for writ of error.
9. Order allowing writ of error and fixing bond.
10. Assignment of errors.
11. Bond on writ of error.
12. Writ of error.
13. Citation and return of service.
14. Praecipe for transcript.

H. M. STEPHENS,

Attorney for Defendant (and plaintiff in error).

Indorsed: Praecipe for Transcript. Filed U. S. Circuit Court, Western District of Washington, July 22, 1911. Sam'l D. Bridges, Clerk. B. O. Wright, Deputy.

In the Circuit Court of the United States for the Western District of Washington, Northern Division.

<p>GREAT NORTHERN RAILWAY COMPANY, a corporation, <i>Plaintiff and Defendant in Error,</i></p> <p style="text-align: center;">vs.</p> <p>THE FIDELITY LUMBER COMPANY, a corporation, <i>Defendant and Plaintiff in Error.</i></p>	}	No. 1948.
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CLERK'S CERTIFICATE TO TRANSCRIPT OF RECORD.

United States of America,
Western District of Washington.—ss.

I, Sam'l D. Bridges, Clerk of the Circuit Court of the United States, for the Western District of Washington, do hereby certify the foregoing 77 printed pages, numbered 1 to 77, inclusive, to be a full, true and correct copy of so much of the record and proceedings in the above and foregoing entitled cause, as is called for by praecipe of Attorney for Defendant and Plaintiff in Error, as the same remain of record and on file in the office of the Clerk of said Court, and that the same constitute the return to the annexed Writ of Error.

I further certify that I annex hereto and herewith transmit the Original Writ of Error and Citation.

I further certify that the cost of preparing and certifying the foregoing return to Writ of Error is the sum of \$94.50, and that the said sum has been paid to me by H. M. Stephens, Esq., Attorney for Defendant and Plaintiff in Error.

In testimony whereof, I hereunto set by hand and affixed the seal of said Circuit Court, at Seattle, in said District, this 15th day of August, A. D. 1911.

{Seal}

SAM'L D. BRIDGES, Clerk.
By B. O. WRIGHT,
Deputy Clerk.

